

## JACK A. ADDESSO, PLLC

ATTORNEYS AT LAW

JACK A. ADDESSO, ESQ.  
OF COUNSEL  
ALAN MEROVITCH, ESQ.

153 STEVENS AVENUE  
MT. VERNON, NEW YORK 10550

TEL: (914) 699-6052  
FAX: (914) 699-1769  
jaapllc@hotmail.com

March 28, 2012

The Honorable Kiyo A. Matsumoto  
United States District Judge  
United States District Court  
Eastern District of New York 225  
Cadman Plaza East  
Brooklyn, New York 11201

Re: United States vs. John Porcello  
Criminal Docket No.: 11-31 (KAM)  
Pre Sentence Submission

Dear Judge Matsumoto:

On August 2, 2011, the Defendant, John Porcello, plead guilty to "Count Five" of an eight count indictment. Count Five charges that between April 2010 and January 2011, Mr. Porcello and Neil Messina, together with others, conspired to make an extortionate extension of credit to a John Doe #2 in violation of 18 U.S.C. Sec. 892(a).

The Defendant was not named in "Count Two" of the indictment. Counts "One," "Three," "Four," "Six," and "Eight" remain open but pursuant to the plea agreement herein the Government will move to dismiss those remaining counts at sentencing with prejudice.

The Defendant submits herewith, as attachments to this sentencing submission, a series of letters from family and friends attesting to the Defendant's overall good character. He is portrayed as a good father to his five (5) children and a loving and caring son to his mother and a positive influence on his siblings.

The pre sentence report at page 14 demonstrates that since 1990 the Defendant has been either gainfully employed or the part owner of several pizzerias. However, his serious back injuries forced him to stop working and is currently the recipient of Social Security disability payments.

The Defendant has also submitted as attachments hereto, documentation of his serious health issues. Defendant has severe chronic back conditions. He manages the severe and persistent pain from this condition with prescription drugs.

Defendant has endured two (2) surgeries to his lower back in the past year to fuse the lower back at L5-S1 by the installation of screws. He has also received direct injections of pain killer to his lumbar spine and to this day is in constant pain each and every day.

In addition to the chronic back condition described above Defendant also suffers from heart disease. Since 2000 he has suffered from chronic angina and received a stent in the right coronary artery in 2003. He also suffers from uncontrolled hypertension and hyperlipidemia. Mr. Porcello's right coronary artery became 95% blocked in 2011 requiring another stent to be inserted in the artery. He also suffers from ischemia which restricts blood flow to the intestines and he is taking Effient to prevent strokes and heart attacks.

The Defendant also has had serious financial troubles which are reflected in paragraphs 64-69 of the pre-sentence report. He currently cannot work and his liabilities are \$39,229.58. His only source of income is his disability check which totals \$2,006 per month. The Defendant would not be able to pay a fine.

The Defendant's plea to Count Five of the indictment is a violation of 18 U.S.C. 892(a). The guideline for this violation is 2E2.1(a). This provides a base offense level of 20. There should not be any adjustments for specific offense characteristics, victim related adjustments, adjustments for the Defendant's role in the offense or for any obstruction of justice. Nor should there be any adjustment for multiple racketeering acts.

The Defendant's criminal history computation as set forth in the pre-sentence report places Defendant in Category I.

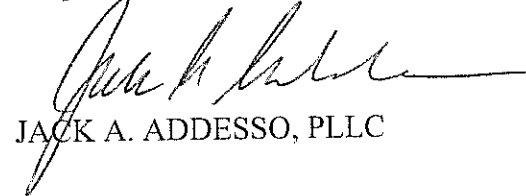
The Defendant should receive an adjustment for acceptance of responsibility as per guideline 3E1.1(a) and since the offense level prior to the operation of subsection 3E1.1(a) is 16 or greater, Defendant should receive an additional reduction of the offense level by one (1) additional level per the guidelines. The resulting total reduction is three (3) levels.

The adjusted offense level of 20 is reduced by three (3) for a total offense level of 17.

The Court should also be mindful that the plea agreement between the Government and the Defendant contains an agreement that an additional two (2) level reduction in the guideline range would be given Defendant if the Defendant plead guilty by August 2, 2011. This additional two (2) level reduction should bring the total offense level to a 15. A level 15 offense level is a Zone D category which carries a sentence between 18-24 months.

The Court is respectfully directed to the information contained in this submission and the pre-sentence report. Defendant asks that the Court consider all of these submissions when determining a sentence to be imposed on Mr. Porcello. As the Court is aware pursuant to United States v. Booker, 543 US 220 (2005), the sentencing guidelines must be consulted but are advisory. The Court is asked to sentence Mr. Porcello to the minimum sentence allowed by law and in the discretion of the Court.

Respectfully submitted,



JACK A. ADDESSO, PLLC

JAA/RMA

cc: Elizabeth A. Geddes, AUSA  
US Attorney  
Eastern District of NY  
21 Cadman Plaza  
Brooklyn, N.Y. 11201